



CITY OF DANBURY

155 DEER HILL AVENUE
DANBURY, CONNECTICUT 06810

ZONING COMMISSION
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MINUTES DECEMBER 9, 2008

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The meeting was called to order by Chairman Ted Farah at 7:30 PM

Present were Anthony DiCaprio, Theodore Haddad Jr., Patrick Johnston, Richard P. Jowdy, David Manacek, Robert Melillo, Larry Stramiello, Andrew Wetmore, and Ted Farah. Also present was Planning Director Dennis Elpern.

Absent were Alternates Victoria Hickey, Jacqueline Perez-Ares and Thomas Spegnolo. Chairman Farah said Ms. Hickey and Ms. Perez-Ares had another commitment this evening and Mr. Spegnolo is still recovering from a recent injury.

Mr. Melillo led the Commission in the Pledge of Allegiance.

Chairman Farah noted that this is the last meeting for the year 2008 and said the next regular meeting is scheduled for January 13, 2009.

Mr. Melillo made a motion to accept the minutes of November 25, 2008. Mr. Johnston seconded the motion and it was passed unanimously.

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PUBLIC HEARING:

7:30 PM - Petition of E.W. Batista Family LP, 155 South St. (#J15048) for Change of Zone from RMF-4 to C-CBD.

Chairman Farah said that since this hearing was re-scheduled from the November 25, 2008 meeting, it was re-advertised in the News-Times and the neighbors were re-noticed. Mr. Wetmore read the legal notice. Mr. Melillo read the Planning Dept. Staff Report dated December 2, 2008. Chairman Farah read the Planning Commission recommendation which was negative. He added that HVCEO has classified this as "of local interest but without intermunicipal impact".

Attorney Neil Marcus said it is unique to be back with this since he was before them previously trying to re-zone for a Rite Aid. He said that petition was turned down and they ended up with CVS across the street. He said this parcel is almost 3/10th of an acre. He referred to a Google Earth flyover map for area with this lot highlighted on it. He introduced PE Dainius Virbickas who prepared the plans they are looking at. Mr. Virbickas pointed out on the Google map what the predominant zoning pattern is in this area. Attorney Marcus then said although the Plan of Conservation & Development doesn't envision this property as commercial that should not be a concern here because it is such a small parcel. Mr. Virbickas then pointed out the mixture of one and two family houses located on South St. Attorney

Marcus then suggested they weigh if the Planning Commission specifically looked at this site when they prepared the Plan of Conservation & Development. He added that he has a problem with the Staff Report saying this "could" result in increased traffic on South St. because "could be's" are never good. He added that the good news is that if they change the zone, this will go back before the Planning Commission as a special exception/site plan review. He then said regarding the suggestion that this would be a commercial intrusion into a residential neighborhood; he suggested they take ride there and look at the RMF zone in immediately adjacent to this site and then worry about intruding into residential zone. He then showed them a rendering of a possible building saying they fought hard to get this approved. Chairman Farah asked if this rendering pertains to the subject property which is 155 South St. Attorney Marcus said this building has a drive-thru which has since been written out of the C-CBD zone. The proposal was to knock down the AAA building and put up a Dunkin Donuts while the former State National building and the house at 155 South St. remain as is. He then referred to the other rendering showing the bigger building saying they need the property at 155 South St to be able to meet the parking requirement for this building, so the only thing that will intrude into the residential neighborhood is parking. He added that they will screen the parking with shrubbery or fencing or possibly both. This new design manages to keep the drive-thru but will move it to a different location on the building. Chairman Farah asked again how this is about 155 South St. Attorney Marcus pointed out a car on one of the renderings saying it is parked on what is now 155 South St.

He then said Mr. Batista was approached by Mayor Boughton's office requesting that he build this type of structure here since this is a gateway to Main St., but they cannot put a building of this size on the existing C-CBD parcel because it cannot accommodate the parking. He added that anything to encourage traffic on Main St. is a good thing since it has become a ghost town since the Mall was built. This proposal is a large step in the revitalization of the south side of Danbury. The building would stand out architecturally as a unique structure. There would be retail on the first floor and offices on the second floor. Chairman Farah asked if this building would be located on 155 South St. Attorney Marcus said it would because they need the subject parcel for parking to make the proposed building work. He reiterated that the reason to rezone 155 South St. is so that this building can be built. He said it also would be able to provide parking for adjacent C-CBD parcels. He said of course there is no guarantee that this building would be built since the Planning Commission could deny it. If that happens the existing C-CBD parcel would have very little development value. He said he agrees the Plan of Conservation & Development has general statements that this proposal does not meet the general purpose. He added that he has not seen anyone other than the CVS come up with any new development for this end of Main St., so he suggested they take the Planning Commission recommendation in the broadest concept.

Mr. Melillo asked if they will combine the parcels in order to build this. Attorney Marcus said they have no choice. Mr. Melillo asked if joining the parcels would mean that the new parcel would have access/egress from both streets. Attorney Marcus said the previous approval had limited access/egress, so they would hope this would allow for some changes to that. He said if this is denied they will still have the Dunkin Donuts on Main St. since they were approved approximately 3½ years ago and the approval is only good for five years. Mr. Melillo said in reality this doesn't matter because there will be an increase in traffic either way. Chairman Farah again asked if they were discussing 155 South St. Mr. Melillo said the Staff Report makes reference to the other adjacent parcels and that is what they are discussing now.

Mr. DiCaprio said he remembered when the zone change for that Rite Aid was before them and recalled what happened since then. He said the former bank building at 2 Main St. has

been occupied intermittently over these years. Attorney Marcus said that proposal did not include 2 Main St or the AAA building; it was for 155 South St and one parcel on Main St. He added that the bank building has not been fully occupied since the law firm was there. Since then there was an alarm business until they went bankrupt and most recently it was Republican Headquarters. Mr. Johnston asked how many units could be put on the subject property if this plan did not go forward. Attorney Marcus said there is an existing two-family dwelling but the maximum would be three units. Mr. Wetmore asked how many people currently live in this house. Mr. Batista said ten people live there. Mr. Johnston asked if there is any traffic information available. Mr. Elpern said it is not required for this petition. Attorney Marcus said there is a traffic study on file but it does not include 155 South St.

Andrea Gartner, CityCenter Danbury, identified herself as a person of interest and said this is not within the CityCenter boundaries, but it will be beneficial to the south end of Main St. She said the new Police Station will serve as an anchor at the North end of Main St. but there is nothing on the south end once you get past Elmwood Park. Mr. Elpern asked Ms. Gartner if this is the position of the CityCenter Board. She replied that she is not here in her position as the manager of CityCenter.

Chairman Farah asked if there was anyone to speak in opposition and a few people came forward.

Anita & Michael Baldasare, said they live at 154 South St., next to the CVS and directly across the street from the subject property. Mrs. Baldasare said she was born in the house on 155 South St. 89 years ago. She said the proposed building looks beautiful but she does not think South St. can handle any more traffic. She read from a 25-year old article from the News-Times that cited this intersection as one of the troublesome ones in Danbury. She added that the other day she counted eighteen cars that had to pass before she could pull out of her driveway. She said she loves this site and although the CVS has been an improvement to the corner, she is concerned about the additional traffic this new building would bring. Mr. Baldasare asked if the driveway will still come out where it is now. He also said people use the driveway into the CVS going the wrong way and someone is going to get hurt. Both Mr. & Mrs. Baldasare said their biggest concern is for more traffic coming out onto South St. Mr. Elpern said what is presently approved is the existing driveway can be used as an entrance only. Attorney Marcus jumped in saying that under the present approval, all traffic will have to exit onto Main St. He added that if what they are proposing here goes forward, they want the South St. driveway to allow both entrance and exit.

Mr. Elpern said for the record, he objects to this discussion because they are speculating about what the Planning Commission will approve without a site plan to refer to.

Leonard Staib, 79 Clapboard Ridge Rd., said the Baldasares' are his in-laws and he is speaking in support of them. In response to Attorney Marcus's claim that there is not a lot of traffic on South St., he suggested that Attorney Marcus must have picked the right time to travel down South St. because there is always a lot of traffic when he travels on it. He added that despite being prohibited, people do use the one-way entrance driveway to exit the CVS parking lot onto South St.

Planning Director Dennis Elpern then said he had some corrections and comments to the information that has been presented. He said before they decide to ignore the Plan of Conservation & Development, they should look at the specifics of this proposal. In this specific situation, the intrusion of commercial development into the residential

neighborhood is not like some bucolic area. The people who live in the RMF zones deserve as much protection as the ones who live in the RA zones or bucolic areas. He said of course if you replace a two family dwelling with commercial development traffic will increase, but it is impossible to make a specific determination as to how much by looking at a strictly conceptual site plan. He said it is not correct to say that the Planning Commission can dictate terms of approval or just flat out deny it. And in response to Attorney Marcus's suggestion that the Planning Commission can impose any number of different requirements on their approval; they tried that and the applicant appealed their decision through the courts. The approval they have today is the result of a stipulated judgment on that appeal. He said he objects to the presentation being based on this drawing because this Commission does not have the authority or the technical expertise to review site plans. This is a case where the applicant could build a smaller building on the property as is but he wants a larger building. If this petition is approved, they can say they believe in comprehensive planning but not for this situation. Also they can say they are against anything that would cause an increase in traffic congestion, but not in this situation. And they can say they are in favor of protecting residential neighborhoods, but not in this situation. In closing he said if they approve this petition, it will raise questions and doubts about their future decisions.

At 8:46 PM, Chairman Farah announced that they would take a ten-minute recess. When they returned at 8:57 PM, he did a roll call to be sure that everyone had returned from the recess.

Chairman Farah asked if anyone had any questions for the Planning Director. Mr. Johnston said over time they have listened to many petitions and Mr. Elpern has always advised them that they can make judgment calls based on the specific situation. Mr. Elpern said that of course they can decide to overlook the Plan of Conservation & Development, but his responsibility is to tell them whether a proposal complies and that is what he did for this petition.

Attorney Marcus then spoke in rebuttal. He said the opposition said they like the building but are concerned about traffic and that is difficult for him to rebut. What they are presenting tonight is a concept, the control over this site lies with the Planning Commission. He said the existing plan does not allow exit onto South St. That is how they approved that plan and he expects they will do that again. Regarding Mr. Elpern's comments, the Planning Commission does have the ability to control this proposal because they have leverage on them with the drive-thru. Since drive-thrus are no longer permitted in the downtown, they have the last approved drive-thru on Main St. The new proposal has a beautiful drive-thru arch that is part of the architectural design of the building. But there is no guarantee that the Planning Commission will allow them to move the location of the drive-thru. And there is no way this building will get built unless they get the approval to move the drive-thru to the new location. He said this really is about selling donuts. The drive-thru is the thing that gives him the assurance that the Planning Commission will impose the appropriate traffic restrictions on it. He reiterated that Andrea Gartner from CityCenter said this would enhance the south end of Main St. He said if this is denied then the building as defined by the court stipulation will be built. He suggested that the Commission is not slavishly committed to the Plan of Conservation & Development. He said if they gamble on this change of zone, they will get something very similar to the rendering approved by the Planning Commission. He also suggested that their negative recommendation was because all they had to go on was the Staff Report.

Mr. DiCaprio asked how the traffic would be affected if the existing bank building stays on the corner parcel. Mr. Haddad asked several questions about how many sq.ft. of building is

approved versus what they can get on these lots. There was some speculation on how this could be worked out. Chairman Farah then reminded them that this petition is for 155 South St. so they should judge it on that parcel only.

Mr. Wetmore made a motion to close the public hearing. Mr. Manacek seconded the motion. Mr. Melillo asked if since the Plan of Conservation & Development is referenced, can they consider it their reference journal and still ask a question after the hearing is closed regarding it. Mr. Elpern said it is an adopted document produced by the Planning Dept. so they can ask him a question about it. Mr. Melillo said his question is about economic development. Mr. Elpern said that could be tricky because it could be considered new information. Attorney Marcus said they have no problem with the Commission keeping the public hearing open.

Mr. Wetmore withdrew his motion to close the hearing. Mr. Manacek withdrew his second. Mr. Wetmore then made a motion to continue this hearing until the next regular meeting on January 13, 2009. Mr. Manacek seconded the motion and it was passed unanimously. Chairman Farah reminded them that because of the negative recommendation from the Planning Commission, this needs a super majority for approval. He asked that they all make an effort to be present at the next meeting, although if necessary, the alternate members could listen to the tapes.

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Chairman Farah said there was nothing under Old or New Business. The Correspondence consisted of the schedule of regular meetings for 2009. He asked if there was anything to discuss under Other Matters and there was nothing. He wished everyone Happy Holidays. Under For Reference Only were listed the public hearings scheduled for January 13, 2009 and January 27, 2009.

At 9:30 PM with no further business to discuss, Mr. Melillo made a motion to adjourn. Mr. Stramiello seconded the motion and it was passed unanimously.